

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROHM AND HAAS TEXAS, INC.,

Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

1. This is a civil action brought against Rohm and Haas Texas, Incorporated ("Rohm & Haas") to obtain injunctive relief and for civil penalties for violations of the following federal statutes and the applicable federal, state, and local regulations and other provisions implementing those statutes: the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. The violations alleged in the Complaint occurred and are occurring at the chemical manufacturing facility ("facility") owned or operated by Rohm & Haas and located in Deer Park, Texas.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and Section 309(b) of the CWA, 33 U.S.C. §§ 1319(b).

4. Notice of the commencement of this action has been given to the State of Texas pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

THE PARTIES

5. Plaintiff is the United States of America.

6. Defendant, Rohm and Haas, is a corporation incorporated under the laws of the State of Texas.

7. At all times relevant, Rohm and Haas owned and operated a chemical manufacturing complex located at 1900 Tidal Road, Deer Park, Texas (hereinafter the "facility").

8. As a corporation, Rohm and Haas is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), Section 302(e) of the CAA, 42 U.S.C.

§ 7602(e), and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Tex. Admin. Code Tit. 30 § 335.1.

STATUTORY AND REGULATORY BACKGROUND

A. CLEAN WATER ACT

9. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of a pollutant by any person, except as authorized by and in compliance with certain enumerated sections of the Act, including CWA Section 402, 33 U.S.C. § 1342.

10. Section 502 of the CWA, 33 U.S.C. § 1362, defines the term “discharge of a pollutant” as: “[A]ny addition of any pollutant to navigable waters from any point source”

11. Section 502 of the CWA, 33 U.S.C. § 1362, defines the term “pollutant” to include chemical, industrial, municipal, and agricultural waste.

12. Section 502 of the CWA, 33 U.S.C. § 1362, defines the term “navigable waters” as the waters of the United States, including its territorial seas.

13. Section 502 of the CWA, 33 U.S.C. § 1362, defines the term “point source” as any discernible, confined and discrete conveyance, including, but not limited to, any ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants may be discharged.

14. Section 309 of the CWA, 33 U.S.C. § 1319, as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), authorizes the Administrator to commence a civil action for injunctive relief and civil penalties, whenever any person is in violation of Section 301 of

the Act, 33 U.S.C. § 1311, or has violated any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. Such person is subject to a civil penalty of up to \$27,500 per day for each such violation that occurred after January 30, 1997 through March 15, 2004, and a civil penalty of \$32,500 per day for each such violation occurring on or after March 15, 2004.

15. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the U.S. EPA Administrator ("Administrator") may issue a permit, known as the National Pollutant Discharge Elimination System ("NPDES") permit, that authorizes the discharge of a pollutant, upon the condition that such discharge meet the requirements of the Act or other conditions that the Administrator may find are necessary. Typically such permits include effluent limitations, monitoring and reporting requirements, as well as operating and maintenance requirements.

16. The Administrator may approve a State NPDES permitting and enforcement program if the State so requests and if the Administrator determines that the State complies with certain requirements. Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

17. If the Administrator approves a state permitting and enforcement program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the Administrator retains the authority to take enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319 and Section 402(i) of the CWA, 33 U.S.C. § 1342(i).

18. On August 14, 1998, the Regional Administrator of EPA Region 6 signed a Memorandum of Agreement ("MOA") approving Texas' NPDES permitting program for individual permits, general permits, and pretreatment activities. Pursuant to the

MOA, the Texas Natural Resources Conservation Commission ("TNRCC") [recently renamed Texas Commission on Environmental Quality ("TCEQ")] issues Texas Pollutant Discharge Elimination System ("TPDES") permits.

B. CLEAN AIR ACT

19. The Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, established a comprehensive scheme for pollution prevention and control, as described in Section 101 of the Act, 42 U.S.C. § 7401.

20. Section 112 of the CAA, 42 U.S.C. § 7412, defines the term "hazardous air pollutant" ("HAP") to mean any air pollutant listed pursuant to Section 112(b). Section 112 requires that the Administrator establish emission standards for the listed pollutants at the level which in his judgment provides an ample margin of safety to protect the public health from such "hazardous air pollutants."

21. Section 112(f)(4) of the CAA, 42 U.S.C. § 7412(f)(4), states that, "No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard."

22. 40 C.F.R. Part 63 contains national emission standards for hazardous air pollutants (NESHAPS) established pursuant to Section 112 of the CAA. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in 40 C.F.R. Part 63.

23. Pursuant to section 112(c) of the CAA, 42 U.S.C. § 7412(c), the Administrator of EPA was required to publish a list of all categories and subcategories

of major sources and area sources of the hazardous air pollutants which are listed section 112(b) of the CAA.

24. Pursuant to section 112(d) of the CAA, 42 U.S.C. § 7412(d), the Administrator of the EPA was required to promulgate standards and methods to implement the maximum degree of reduction in emissions of the hazardous air pollutants from the sources listed by EPA. EPA promulgated requirements in 40 C.F.R. Part 63 for control technology that would be based on maximum achievable control technology ("MACT") standards for the listed sources.

25. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), authorizes the assessment of civil penalties not to exceed \$27,500 per day for each violation of Section 112(d) of the CAA, 42 U.S.C. § 7412(d) that occurred after January 30, 1997 through March 15, 2004, and authorizes the assessment of civil penalties not to exceed \$32,500 per day for each such violation that occurred on or after March 15, 2004.

C. RCRA

26. RCRA establishes a comprehensive statutory scheme for the management of hazardous wastes from their initial generation until their final disposal. Pursuant to RCRA Section 3002(a), 42 U.S.C. § 6922(a), EPA promulgated regulations applicable to generators of hazardous waste, and pursuant to RCRA Section 3005(a), 42 U.S.C. § 6925(a), EPA promulgated regulations prohibiting the treatment, storage or disposal of hazardous wastes without a permit. These regulations are codified at 40 C.F.R. Part 260 et seq.

27. Under RCRA Section 3006(b), 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, any state may apply for and receive authorization to enforce its own hazardous waste management program in place of the federal hazardous waste management program described in the preceding paragraph, provided the state requirements are consistent with and equivalent to the federal requirements. To the extent that the state hazardous waste program is authorized by U.S. EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the requirements of the state program are effective in lieu of the federal hazardous waste management program set forth in 40 C.F.R. Part 260 et seq.

28. Texas has promulgated hazardous waste management regulations at Tex. Admin. Code Tit. 30, Ch. 335 and received authorization from U.S. EPA on December 26, 1984, to administer various aspects of the hazardous waste management program within Texas. 49 Fed. Reg. 48300 (1984).

29. Tex. Admin. Code Tit. 30 §§ 335.2 and 335.43(a) provides that, with certain exceptions which are not relevant here, no person shall store, process, or dispose of hazardous waste without first having obtained a permit from TNRCC)(predecessor agency to the present "TCEQ".

30. Tex. Admin. Code Tit. 30 § 335.69(a) provides that a generator of hazardous waste may accumulate hazardous waste on-site for 90 days without a permit provided that the generator complies with certain requirements concerning placement of the waste, marking of containers, and certain other requirements.

31. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the United States is authorized, upon notification to the State of Texas, to enforce the regulations which comprise the federally approved Texas hazardous waste management program.

32. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that when any person has violated or is in violation of any requirement of RCRA, including provisions of a federally approved state hazardous waste management program, the Administrator of U.S. EPA may commence a civil action in U.S. District Court for appropriate relief, including a temporary or permanent injunction.

33. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Federal Civil Penalties Adjustment Act of 1990, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461), provides that any person who violates a requirement of RCRA shall be liable for a civil penalty of up to \$27,500 per day for each violation that occurred after January 30, 1997 through March 15, 2004, and authorizes the assessment of civil penalties not to exceed \$32,500 per day for each such violation that occurred on or after March 15, 2004.

FACTUAL ALLEGATIONS

A. CLEAN WATER ACT ALLEGATIONS

34. At all times relevant to this matter, Rohm and Haas discharged pollutants from the facility.

35. The wastewater discharged by Rohm and Haas contained and continues to contain "pollutant[s]" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

36. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), EPA issued to Rohm and Haas NPDES Permit No. TX0006084 ("the 1994 Permit") effective November 1, 1994. The 1994 Permit authorized Rohm and Haas to discharge from Outfalls 001, 002, 003, 004, 005, 006, 007. The 1994 Permit specified effluent limitations, monitoring and reporting requirements, and other conditions. With regard to ammonia nitrogen in discharges from Outfalls 001 and 007, the 1994 Permit set a limit on the total amount of ammonia nitrogen discharged from both outfalls, and the permit identified the combined limit as applying to "Outfall 008."

37. Pursuant to the 1994 Permit, Rohm and Haas discharged pollutants from its facility through Outfalls 001, 002, 003, 004, 005, 006, and 007, each of which is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

38. On November 1, 1997, EPA modified the 1994 Permit, revising some of the effluent limits and reporting requirements ("the 1997 Permit Modification"). The 1997 Permit Modification authorized Rohm and Haas to discharge from Outfalls 001, 002, 003, 004, 005, 006, 007, 009. The 1997 Permit Modification specified effluent limitations, monitoring and reporting requirements, and other conditions. With regard to ammonia nitrogen in discharges from Outfalls 001, 007, and 009, the 1997 Permit Modification set a limit on the total amount of ammonia nitrogen discharged from all three outfalls, and the permit identified the combined limit as applying to "Outfall 008." With regard to discharges of copper, cyanide, nickel, and zinc from Outfall 009, the 1997 Permit Modification set a limit on discharges of copper, cyanide, nickel, and zinc from Outfall 009 and identified the limit as applying to "Outfall 109." The 1997 Permit

Modification also specified an effluent limit on the total discharges of numerous pollutants from Outfalls 001 and 009, including total suspended solids ("TSS"), biochemical oxygen demand ("BOD"), chlorine, nickel, cyanide, numerous volatile compounds, acid compounds, and base/neutral compounds, and the permit identified the combined limit as applying to "Outfall 010."

39. Pursuant to the 1997 Permit Modification, Rohm and Haas discharged pollutants from its facility through Outfalls 001, 002, 003, 004, 005, 006, 007, and 009, each of which is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

40. On November 28, 2001, TNRCC issued TPDES Permit No. 00458 ("the 2001 TPDES Permit") which superceded the previous permit issued by EPA. The 2001 TPDES Permit authorized Rohm and Haas to discharge from Outfalls 001, 002, 003, 004, 005, 006, 007, 009. The 2001 TPDES Permit specified effluent limitations, monitoring and reporting requirements, and other conditions. With regard to ammonia nitrogen in discharges from Outfalls 001, 007, and 009, the 2001 TPDES Permit set a limit on the total amount of ammonia nitrogen discharged from all three outfalls, and the permit identified the combined limit as applying to "Outfall 008." The 2001 TPDES Permit also specified an effluent limit on the total discharges of numerous pollutants from Outfalls 001 and 009 including TSS, BOD, chlorine, cyanide, numerous volatile compounds, acid compounds, and base/neutral compounds, and the permit identified the combined limit as applying to "Outfall 010."

41. Pursuant to the 2001 TPDES Permit, Rohm and Haas discharged and continues to discharge pollutants from its facility through Outfalls 001, 002, 003, 004,

005, 006, 007, and 009, each of which is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

42. At all relevant times, Outfalls 001, 006, and 009 discharged into the Houston Ship Channel. The Houston Ship Channel is a "navigable water of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

43. At all relevant times, Outfalls 002, 004, 005, and 007 discharged into Tucker Bayou, then to the Houston Ship Channel. Tucker Bayou is a "navigable water of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

44. At all relevant times, Outfall 003 discharged into the East Fork Patrick Bayou, then to the Patrick Bayou, then to the Houston Ship Channel. The East Fork Patrick Bayou is a "navigable water of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

45. The 1994 Permit, the 1997 Permit Modification, and the 2001 TPDES Permit required Rohm and Haas to monitor its pollutant discharge from its facility. The results of this pollutant monitoring are required to be submitted on a monthly basis in the form of a Discharge Monitoring Report ("DMR") to EPA, TCEQ, or TNRCC (predecessor agency to TCEQ), depending on the applicable permit.

46. At all times relevant to this action, Rohm and Haas has submitted DMRs to the EPA, TCEQ, and TNRCC.

47. Rohm and Haas' DMRs submitted to EPA, TCEQ, and TNRCC show numerous instances of discharges of effluent from the facility containing pollutants in excess of the permitted effluent limitations from at least May 1999 to the present.

B. CLEAN AIR ACT ALLEGATIONS

48. On July 10-14, 2000, EPA representatives conducted a multimedia inspection of the facility to determine compliance with the Clean Air Act, the Clean Water Act, and RCRA (hereinafter referred to as "the inspection".)

49. The B-3 and P-North areas at the facility are subject to NESHAP 40 C.F.R. Part 63, Subpart F, "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry; and NESHAP 40 C.F.R. Part 63, Subpart H, "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks."

50. Pursuant to 40 C.F.R. § 63.100, the provisions of 40 C.F.R. Part 63, Subparts F., G., and H apply to chemical manufacturing process units that (1) manufacture methyl methacrylate, (2) use methyl methacrylate as a reactant, and (3) are located at a plant site that is a major source as defined in section 112(a) of the CAA, 42 U.S.C. § 7412(a).

51. Rohm and Haas' facility has chemical manufacturing process units that manufacture methyl methacrylate.

52. Rohm and Haas' facility has chemical manufacturing process units that use methyl methacrylate as a reactant.

53. Rohm and Haas' facility has chemical manufacturing process units at a plant site that is a major source as defined in section 112(a) of the CAA, 42 U.S.C. § 7412(a).

54. Pursuant to 40 C.F.R. 63.160, the provisions of 40 C.F.R. subpart H apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or closed vent systems required by subpart H that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year.

55. At its facility, Rohm and Haas operates pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or closed vent systems required by subpart H that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year. Therefore, 40 C.F.R. Subpart H is applicable to the Rohm and Haas facility.

56. Pursuant to 40 C.F.R. § 63.163(b)(3), each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

57. Rohm and Haas failed to conduct weekly inspections of the pumps in the P-North area of the facility from May 1999 through January 2000 in violation of 40 C.F.R. § 63.163(b)(3).

58. Pursuant to 40 C.F.R. § 63.180(b)(3), detection instruments shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 C.F.R. Part 60, Appendix A.

59. Rohm and Haas failed to properly calibrate the detection instrument used to perform Method 21 monitoring in the B-3 area of the facility from on or about February 1, 2001, in violations of 40 C.F.R. § 63.180(b)(3).

60. Pursuant to Method 21 of 40 C.F.R. Part 60, 8.1.1.1, when calibrating the detection instrument by introducing the calibration gas mixture to the analyzer, the observed meter reading shall be recorded.

61. Rohm and Haas failed to record the meter readings during the calibration of the detection instrument used to perform Method 21 monitoring in the B-3 area of the facility from May 1999 through March 2000 in violation of 40 C.F.R. § 63.180(b)(3).

C. RCRA ALLEGATIONS

62. As part of its operations at the facility, Respondent generates hazardous waste materials; therefore, Respondent is a "generator" of "hazardous waste" as defined in Tex. Admin. Code Tit. 30 § 335.1

63. Pursuant to Tex. Admin. Code Tit. 30 § 335.112, the State of Texas incorporated by reference the regulations specified in 40 C.F.R. Part 265, Subpart B and J, along with other subparts.

64. Pursuant to 40 C.F.R. § 265.193(e)(1)(iii)^{1/}, an owner or operator of a facility that uses tank systems to store or treat hazardous waste shall have secondary systems that are free of cracks or gaps.

65. During the inspection, EPA representatives observed large cracks and a hole in the concrete of the secondary containment of two hazardous waste tanks identified with tank numbers 40576 and 40570 that stored acetic and EA light ends hazardous waste. The large cracks and hole in the concrete of the secondary of the two hazardous waste tanks are in violation of 40 C.F.R. § 265.193(e)(1)(iii) and Tex. Admin. Code Tit. 30 § 335.112.

66. Pursuant to 40 C.F.R. § 265.15^{2/}, an owner or operator of a facility that treats, stores, or disposes of hazardous waste must inspect its facility for malfunctions and deterioration, operator errors, and discharges which may be causing, or may lead to releases of hazardous constituents to the environment or a threat to human health.

67. During the inspection, EPA representatives determined that Rohm and Haas did not develop and implement a written schedule for inspecting equipment located where hazardous waste is stored to detect, prevent, and respond to malfunctions and deterioration in violation of 40 C.F.R. § 265.15 and Tex. Admin. Code Tit. 30 § 335.112.

^{1/}40 C.F.R. § 265.193(e)(1)(iii) is part of 40 C.F.R. Part 265, Subpart J

^{2/}40 C.F.R. § 265.15 is part of 40 C.F.R. Part 265, Subpart B

68. Pursuant to Tex. Admin. Code Tit. 30 § 335.69(a), a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that the waste is:

- a. in a container that is closed during storage except when necessary to add or remove waste (Tex. Admin. Code Tit. 30 § 335.69(a)(1)(A); and
- b. in a container with the date upon which each period of accumulation is clearly marked and visible for inspection on each container (Tex. Admin. Code Tit. 30 § 33.69(a)(2).

69. During the inspection, EPA representatives observed two 30-gallon hazardous waste satellite accumulation containers in the PCL Lab #113 that were open in violation of Tex. Admin. Code Tit. 30 § 335.69(a)(1)(A); therefore, Rohm and Haas stored waste without a permit in violation of Tex. Admin. Code Tit. 30 §§ 335.2 and 335.43 and 40 C.F.R. § 270.1.

70. During the inspection, EPA representatives observed a container in the hazardous waste storage area without a date of accumulation marked on the container in violation of Tex. Admin. Code Tit. 30 § 335.69(a)(2); therefore, Rohm and Haas stored waste without a permit in violation of Tex. Admin. Code Tit. 30 §§ 335.2 and 335.43 and 40 C.F.R. § 270.1.

71. Pursuant to Tex. Admin. Code Tit. 30 § 324.1, the State of Texas incorporated by reference the regulations specified in 40 C.F.R. Part 279.

72. Pursuant to 40 C.F.R. § 279.22(c)^{3/}, used oil generators must label or mark all containers and above-ground tanks that are used to store used oil at the generator's facility with the words "Used Oil."

73. During the inspection, EPA representatives observed a 30-gallon container in the HR-1 Unit of the facility near the SO₂ blower that was holding used oil and that was not labeled with the words "Used Oil" in violation of 40 C.F.R. § 279.22(c) and Tex. Admin. Code Tit. 30 § 324.1.

FIRST CLAIM FOR RELIEF
(CWA- Permit Effluent Limit Violations)

74. Plaintiff realleges each and every allegation set for in Paragraphs 1-18 and 34-47 above.

75. Rohm and Haas violated the 1997 Permit Modification and the 2001 TPDES Permit on numerous occasions from at least May 1999 to the present by discharging pollutants from its outfalls in amounts that exceed the applicable permit effluent limitations.

76. Each discharge of pollutants in excess of the effluent limitations authorized in the 1997 Permit Modification or the 2001 TPDES permit by Rohm and Haas constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day of the excessive discharge.

77. Rohm and Haas will continue to discharge discharge pollutants in excess of the effluent limitations in its 2001 TPDES permit unless ordered by the Court to cease.

^{3/}40 C.F.R. § 279.22 is part of 40 C.F.R. Part 279..

78. For each violation of the applicable permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a) referenced above, Rohm and Haas is liable for a civil penalty of up to \$27,500 per day for each such violation that occurred after January 30, 1997 through March 15, 2004, and a civil penalty of \$32,500 per day for each such violation occurring on or after March 15, 2004.

SECOND CLAIM FOR RELIEF
(CAA- Failure to Conduct Weekly Inspections)

79. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 19-25, and 48-57 above.

80. By failing to conduct weekly inspections of the pumps in the P-North area of the facility from May 1999 through January 2000, Rohm and Haas violated 40 C.F.R. § 63.163(b)(3).

81. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Rohm and Haas is liable for a civil penalty of up to \$27,500 per violation per day.

THIRD CLAIM FOR RELIEF
(CAA- Failure to Properly Calibrate Detection Instrument)

82. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 19-25, 48-55, and 58-59 above.

83. By failing to properly calibrate the detection instrument used to perform Method 21 monitoring in the B-3 area of the facility on or about February 1, 2001, Rohm and Haas violated 40 C.F.R. § 63.180(b)(3).

84. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Rohm and Haas is liable for a civil penalty of up to \$27,500 per violation per day.

FOURTH CLAIM FOR RELIEF

(CAA- Failure to Record Meter Reading During Calibration)

85. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 19-25, 48-55, and 58-61 above.

86. By failing record the meter readings during the calibration of the detection instrument used to perform Method 21 monitoring in the B-3 area of the facility from May 1999 to March 2000, Rohm and Haas violated 40 C.F.R. § 63.180(b)(3).

87. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Rohm and Haas is liable for a civil penalty of up to \$27,500 per violation per day.

FIFTH CLAIM FOR RELIEF

(RCRA - Failure to Maintain Secondary Containment free of Cracks)

88. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 26-33, 48, and 62-65 above.

89. Rohm and Haas violated Tex. Admin. Code Tit. 30 § 335.112 and 40 C.F.R. § 265.193(e)(1)(iii) by having large cracks and a hole in the concrete of the secondary containment of two hazardous waste tanks identified with tank numbers 40576 and 40570.

90. For violations of Tex. Admin. Code Tit. 30 §§ 335.112 and 40 C.F.R. § 265.193(e)(1)(iii), Rohm and Haas is liable under RCRA Sections 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for a civil penalty of up to \$27,500 per day per violation.

SIXTH CLAIM FOR RELIEF

(RCRA - Failure to Develop and Implement Written Schedule for Inspections)

91. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 26-33, 48, 62-63, and 66-67 above.

92. Rohm and Haas violated Tex. Admin. Code Tit. 30 § 335.112 and 40 C.F.R. § 265.15 by failing to develop and implement a written schedule for inspecting equipment located where hazardous waste is stored to detect, prevent, and respond to malfunctions and deterioration.

93. For violations of Tex. Admin. Code Tit. 30 § 335.112 and 40 C.F.R. § 265.15, Rohm and Haas is liable under RCRA Sections 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for a civil penalty of up to \$27,500 per day per violation.

SEVENTH CLAIM FOR RELIEF

(RCRA - Storing Hazardous Waste Without a Permit)

94. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 26-33, 48, 62-63, and 68-70 above.

95. Rohm and Haas violated Tex. Admin. Code Tit. 30 §§ 335.2 and 335.43(a) and RCRA Section 3005(a), 42 U.S.C. § 6925(a), by storing hazardous waste at the facility without a permit from TCEQ.

96. For violations of Tex. Admin. Code Tit. 30 §§ 335.2 and 335.43(a) and RCRA Section 3005(a), 42 U.S.C. § 6925(a), Rohm and Haas is liable under RCRA Sections 3008(a) and (g); 42 U.S.C. § 6928(a) and (g), for a civil penalty of up to \$27,500 per day per violation.

EIGHTH CLAIM FOR RELIEF

(RCRA - Failure to Label a Used Oil Container)

97. Plaintiff realleges each and every allegation set for in Paragraphs 1-8, 26-33, 48, and 71-73 above.

98. Rohm and Haas violated Tex. Admin. Code Tit. 30 § 324.1 and 40 C.F.R. § 279.22(c) by storing used oil in a container without the label with the words "Used Oil" at the HR-1 Unit of the facility.

99. For violations of Tex. Admin. Code Tit. 30 § 324.1 and 40 C.F.R. § 279.22(c), Rohm and Haas is liable under RCRA Sections 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for a civil penalty of up to \$27,500 per day per violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests that the Court:


(A) Order Rohm and Haas to take all actions necessary to comply with the CWA, the CAA, and RCRA;

(B) Assess civil penalties against Rohm and Haas for up to the amounts provided in the applicable statutes;

(C) Award the United States the costs and disbursements of this action; and

(D) Grant any and all relief to which the United States is otherwise entitled.

Respectfully submitted,


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